IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2007

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THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.29416 of 2006
&
M.P.Nos.1 & 2 of 2006

N.Munisamy . . Petitioner

Vs

1.The Director of School Education,
College Road,
Chennai 600 006.

2.The Joint Director of School Education,
(Higher Secondary),
College Road,
Chennai 600 006.

3.The Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai 606 601.

4.The Headmaster,
Government Higher Secondary School,
Kilpennathur 604 601,
Tiruvannamalai District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the third respondent in his proceedings Oo.Mu.No.4310/A5/2006, dated 30.06.2006 and quash the same and also directing the third respondent herein to issue appropriate orders to re-employ the petitioner in his superannuated vacancy of Graduate Assistant(History)(B.T) in Government Higher Secondary School, Kilpennathru 604 601, Tiruvannamalai District for the period from 1.7.2006 to 31.5.2007 with all attendant benefits.

For Petitioner : Mr.J.Selvarajan

For Respondents: Mr.P.Gopiraja G.A.

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ORDER

The writ petition is filed against the order of the third respondent dated 30.06.2006 under which the third respondent has denied the claim of the petitioner for reemployment till the end of the academic school year 2006-2007 on the ground that the service of the petitioner as teacher is less than 10 years and he was not eligible for pensionary benefits.

2.The petitioner worked as B.T. Assistant (History) in the Government Higher Secondary School, Kilpennathur till the date of superannuation i.e. upto 30.06.2006. As per G.O.Ms.No.1643, Education (U2) Department, dated 27.10.1988, the petitioner is eligible for reemployment on attaining the age of superannuation till the end of the academic year i.e. upto 31.5.2007. The Petitioner, while in service, on 02.06.2006, has made a request to the Headmaster, the fourth respondent herein, expressing his desire to have reemployment at the age of superannuation till the end of academic school year. He has also enclosed a certificate of physical fitness issued by the competent medical authority. Apart from that the petitioner enclosed a certificate issued by the fourth respondent, the Headmaster, stating that there are no disciplinary proceedings pending against the petitioner. It was after considering all the above facts, the third respondent has passed the impugned order rejecting the claim of the petitioner on the basis that the petitioner has served as teacher only for 7 years and 7 months and therefore he is not eligible for pension and on that basis the right of reemployment was denied.

3.The third respondent also filed a counter affidavit. The only reason given in the counter affidavit for denying the right of the petitioner is that, as I have narrated earlier, the petitioner has not completed 10 years of service and therefore not eligible for pension under the relevant pension rules and on that ground only the reemployment is rejected.

4.On the other hand, in paragraphs 3 and 4 of the counter affidavit, it is categorically admitted that the petitioner is complying with all pre-requisite qualification namely that his character and conduct are good and he was physically fit and there was no disciplinary proceedings pending against him. It is relevant to extract the paragraphs 3 and 4 of the counter affidavit hereunder;-

> "3.It is a fact that the petitioner retired on 30.06.2006 on superannuation. He worked as B.T. Assistant in Government Higher Secondary School, Kilpennathur. He had put in a service of only less than 7 years which will not be taken into account for pension as per Rule 43(2) of the

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Tamil Nadu Pension Rules. Therefore the third respondent the Chief Educational Officer, Tiruvannamalai denied reemployment till the school year 2006-2007.

4.Though he is having the pre-requisite qualification such as character and conduct and physically fit and have no disciplinary action, he has not completed 10 years of service to become eligible for pension. As per Pension Rules 43(2) only after becoming eligible for pension, his reemployment pay could be fixed. Reemployment pay is equal to pay last drawn minus pension."

5.The provisions of G.O.Ms.No.1643, Education (U2) Department, dated 27.10.1988 makes it very clear about the pre-requisite conditions for the purpose of reemployment in respect of teachers who have attained the age of superannuation during the middle of academic year which are as follows;

1.The Character, and the conduct of the teacher should be satisfactory.
2.They should be physically fit to continue in service.

Apart from these two conditions there are no other reasons given under the said Government Order for denying the right of the petitioner to have reemployment till the end of the academic year.

6.In view of the above said proposition, it is not known as to why the respondents have taken a stand that the petitioner has not put in required minimum year of service for pension and only after becoming eligible for pension, his reemployment pay could be fixed, reemployment pay is equal to pay last drawn minus pension and therefore he would not be given the right of reemployment. This is certainly an extraneous reason not in conformity with G.O.Ms.No.1643, Education (U2) Department, dated 27.10.1988 which gives a statutory right to the teachers who are retiring in the middle of the academic year tobe eligible for reemployment till the end of the academic year.

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7.The purport of the said Government Order has been decided by this Court more than once. When dealing with the G.O.Ms.No.1643, Education (U2) Department, dated 27.10.1988, P.D.Dinakaran,J. in the order reported in 1998 WLR 77 (MANGAYARKARASI.B v. THE DISTRICT COLLECTOR, SIVAGANGAI)has held in paragraph 6 as follows;

6.The Government while passing the G.O.Ms.No.1643, Education (U2) Department, dated

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27.10.1988 has taken into consideration, the existing strength of the staff as on the date of retirement of the petitioner on superannuation, which includes the post held by the petitioner till he attains his superannuation and also the financial constraints if the petitioner is reemployed till the end of superannuation and passed the said Government Order. While so, I do not see any valid reason to refuse the reemployment to the petitioner particularly when the District Elementary Educational Officer himself has recommended for such reemployment of the petitioner till the end of his superannuation. On the other hand, the grievance of the petitioner, is well founded because if the petitioner is denied of his reemployment till the end of the academic year, the petition would be put into hardship and prejudice, particularly when he has served in the first respondent school for nearly 35 years without any stigma. Therefore, I am obliged to allow this writ petition as prayed for."

8.Inasmuch as the right of the reemployment is almost a matter of statutory right, I do not think that the reason adduced by the third respondent in the impugned order as also in the counter affidavit that the petitioner has not rendered minimum required service for earning pension and therefore he should be denied the said right is valid.

9.The learned Government Advocate would submit by placing reliance on the counter affidavit that on reemployment such teachers should be paid salary equal to pay last drawn minus pension. In the present case when admittedly, the petitioner is not entitled for pension, when the petitioner has not put in minimum requirement of service for earning pension, there will be some problem regarding fixation of pay. I am afraid, this can never be a ground to reject the claim of the petitioner. There is absolutely no difficulty to come to the conclusion after hearing the learned counsel for the petitioner and the learned Government Advocate that the petitioner is entitled for reemployment from the next date of superannuation namely

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01.07.2006 till the end of the academic school year i.e. upto 31.05.2007. Accordingly the writ petition stands allowed with a direction to the respondents to reemploy the petitioner forthwith and pay the salary in accordance with law and the impugned order of the third respondent dated 30.06.2006 stands quashed. No costs. Consequently, connected M.Ps. are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Director of School Education,
College Road,
Chennai 600 006.
2.The Joint Director of School Education,
(Higher Secondary),
College Road,
Chennai 600 006.
3.The Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai 606 601.
4.The Headmaster,
Government Higher Secondary School,
Kilpennathur 604 601,
Tiruvannamalai District.

+1cc to Mr.J.Selvarajan,Advocate Sr 2405
+1cc to the Govt. Pleader, High Court, Madras -104 Sr 2803

SGL (CO)
km/18.1.

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